



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

fw

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/082,623	02/22/2002	Kenneth Brincat	52194-00002	4453

7590

07/31/2003

Stanley R. Moore, Esq.
Jenkins & Gilchrist, P.C.
Suite 3200
1445 Ross Avenue
Dallas, TX 75202-2799

EXAMINER

NICOLAS, FREDERICK C

ART UNIT PAPER NUMBER

3754

8

DATE MAILED: 07/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/082,623

Applicant(s)

BRINCAT, KENNETH

Examiner

Frederick C. Nicolas

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 and 15-38 is/are pending in the application.
- 4a) Of the above claim(s) 14 and 39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 and 15-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 09 June 2003 is: a) ☒ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4,6-8,12,15-27,29-30,34-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Caluwe et al. (U.S 5,156,299) in view of Sloan et al. (U.S 6,039,213).

De Caluwe et al. discloses a refillable container (11), which comprises a vessel (11a) of known volume adapted for holding a volume of substance therein (column 4, lines 47-52), a discharge assembly/cap (2) is adapted for select discharge of quantities of the substance contained within the container, a refill assembly comprising a portion of the container (11a) adapted for facilitating the filling of the container with the substance. De Caluwe et al. lacks of means for identifying the substance contained within the refillable container. Sloan et al. teaches the use of having a means (44) for identifying a substance within a container (10), where the substance is shampoo or liquid soap (column 1, lines 58-66).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teaching of Sloan et al. onto the invention of De Caluwe et al. as such, in order to provide a label posted on the container indicating the type of materials within the container, as taught by Sloan et al.

Art Unit: 3754

It also would have been obvious to one having ordinary skill in the art at the time the invention was made to substitute the product of De Caluwe with the product of Sloan et al., in order to dispense a variety of different type of product.

3. Claims 5,28,38 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Caluwe et al. (U.S 5,156,299) in view of Sloan et al. (U.S 6,039,213) as applied to claims 2,22 and 34 above, and further in view of Klima, Jr. et al. (U.S 2001/0022204 A1).

De Caluwe et al. - Sloan et al. combination has all the features of the claimed invention except for a consumer product sold in volumes substantially greater than the volume of the refillable container. Klima, Jr. et al. shows a refillable container (12), a consumer product (38, 40, and 42), where the consumer product sold in volumes substantially greater than the volume of the refillable container as best seen in Figure 1.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the consumer product of Klima, Jr. et al. with the invention of De Caluwe et al., in order to provide an apparatus and method for refilling the refillable container.

4. Claims 9-10,31-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Caluwe et al. (U.S 5,156,299) in view of Sloan et al. (U.S 6,039,213) as applied to claims 1 and 22 above, and further in view of Labonte (U.S 5,301,845).

De Caluwe et al. - Sloan et al. combination has all the features of the claimed invention except for the refillable container is flexible in construction. Labonte teaches the use of having a flexible container (column 2, lines 66-68 onto column 3, lines 1-6).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the container of De Caluwe et al. into a flexible container, in order to provide a squeezable container.

5. Claims 11,33 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Caluwe et al. (U.S 5,156,299) in view of Sloan et al. (U.S 6,039,213) as applied to claims 1 and 25 above, and further in view of Wilson (U.S 5,265,769).

De Caluwe et al. - Sloan et al. combination has all the features of the claimed invention except for the identification means comprises at least portions of the container being formed of substantially transparent material. Wilson teaches the use of having a transparent container (column 3, lines 40-48).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize Wilson's teaching onto the invention of De Caluwe et al. by modifying the refillable container (11) as such, in order to expose to the user the product within the refillable container.

6. Claims 1,12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Caluwe et al. (U.S 5,156,299) in view of Meadows et al. (U.S 5,664,704).

De Caluwe et al. discloses a refillable container (11), which comprises a vessel (11a) of known volume adapted for holding a volume of substance therein (column 4, lines 47-52), a discharge assembly/cap (2) is adapted for select discharge of quantities of the substance contained within the container, a refill assembly comprising a portion of the container (11a) adapted for facilitating the filling of the container with the substance. De Caluwe et al. lacks of means for identifying the substance contained within the

Art Unit: 3754

refillable container. Meadows et al. teaches the use of having a means for identifying a substance within a container (12) as best seen in Figure 2, where the identification means comprising a label (26) (column 4, lines 3-7).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize the teaching of Meadows et al. onto the invention of De Caluwe et al. as such, in order to provide proper identification of the container contents.

Response to Arguments

7. Applicant's arguments filed 6/9/2003 have been fully considered but they are not persuasive. In response to applicant's argument on page 7, lines 4-21 and on page 8, lines 7-19, that the reference of De Caluwe is designed to be separated in two parts so that a flexible disposable recharge can be inserted and attached through a connecting piece and in contrast, the present invention does not require a separate refill package. Applicant should note that the above noted features along with the rest of arguments on page 7, lines 4-21 and page 8, lines 7-19, are not recited in the rejected claim(s).

Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). In response to applicant's argument that there is no suggestion to combine the reference of De Caluwe in view of Sloan, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*,

Art Unit: 3754

837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, De Caluwe et al. lacks a means for identifying the substance contained within the refillable container and Sloan et al. teaches the use of having a means (44) for identifying a substance within a container (10), where the substance is shampoo or liquid soap (column 1, lines 58-66). Therefore, one having ordinary skill in the art would readily utilize the teaching of Sloan et al. onto the invention of De Caluwe et al. as such, in order to provide a label posted on the container indicating the type of materials within the container, as taught by Sloan et al. Any remaining arguments have been fully addressed in the above rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Lichfield et al., Sadow, Copeland et al., Farley, Dunning et al., Tobler and Vaida disclose other types of refillable container.

9. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3754


the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frederick C. Nicolas whose telephone number is (703)-305-6385. The examiner can normally be reached on Monday - Friday from 9:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mancene L Gene, can be reached on (703) 308-2696. The fax phone number for the organization where this application or proceeding is assigned is (703)-872-9302 and for after final communication is (703)-872-9303.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0861.

FN
July 28, 2003

 7/28/03


Gene Mancene
Supervisory Patent Examiner
Group 3700